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Counsel for OHI Asset RO, LLC and certain affiliates

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
4 West Holdings, Inc. *et al.*,	§	Case No. 18-30777 (HDH)
Debtors.	§	(Jointly Administered)

MOTION FOR RECONSIDERATION OF ORDER GRANTING DEBTORS' MOTION TO APPROVE PLAN MODIFICATIONS UNDER BANKRUPTCY RULE 3019

OHI Asset RO, LLC ("***OHI***") and certain affiliates (collectively, "***Omega***") request the Court to reconsider its Order Granting Debtors' Motion to Approve Plan Modifications [Docket No. 1214] (the "***3019 Order***") and thereby deny the *Debtors' Motion (A) to Approve Plan Modifications under Bankruptcy Rule 3019 and (B) for Related Relief* [Docket No. 1055]. In support of which, Omega respectfully states as follows:

I.
PRELIMINARY STATEMENT

1. Respectfully, the 3019 Order is predicated on a fundamental error. It impermissibly "creates" new value upon recharacterization of the Transfer Portfolio[1] ***without*** accounting for Omega's corresponding $190 million secured claim arising from that recharacterization. As recognized by the Court, upon recharacterization, $190 million of Transfer Portfolio value was made part of the estates; however, the Court's ruling fails to simultaneously recognize that such value was fully encumbered by Omega's liens, thereby resulting in a new $190 million secured claim in favor of Omega. As such, any modification under Rule 3019 that abridges Omega's right to payment in full on its $190 million secured claim is material and adverse to the treatment of Omega's claims and an impermissible abrogation of Omega's substantive rights under the Bankruptcy Code. Accordingly, the Court should reconsider its ruling and deny the relief requested in the Rule 3019 Motion.

II.
STANDARD

2. This motion for reconsideration, filed within 14 days of the entry of the 3019 Order, is filed pursuant Bankruptcy Rule 9023 and Federal Rule of Civil Procedure 59(e) incorporated thereby. *Stangel v. United States (In re Stangel)*, 68 F.3d 857, 859 (5th Cir. 1995); *McLoba Partners, Ltd v. Adkins (In re Adkins)*, No. 12-10314-RLJ-7, 2014 WL 7338948, at *1 (Bankr. N.D. Tex. Dec. 22, 2014). A Rule 59(e) motion "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (quotations omitted). Such motions are appropriate where there is a manifest error of law or fact. *Transamerican Refining Corp. v. Texas Comptroller of Public Accounts (In re Transtexas Gas Corp.)*, 303 F.3d 571, 581 (5th Cir. 2002). Failure to consider and address a legal argument raised warrants reconsideration. *Hosking v. TPG Capital Mgmt., L.P. (In re Hellas Telecomms. (Luxembourg) II SCA)*, 526 B.R. 499 (Bankr. S.D.N.Y. 2015).

[1] Capitalized terms used but not defined herein have the meanings assigned to them in the 3019 Order or in the Original Plan, as applicable.

III.
BACKGROUND

3. On the Petition Date, prior to recharacterization, Omega held a claim of "$52 million . . . as rent due under the Master Leases [and] $15 million . . . under a working capital loan." 3019 Order, p. 2. Omega also had a contingent lease rejection claim. The Debtors' assets did not include any owned real property; the Debtors' primary assets were their leaseholds, associated operations, and accounts receivable. Substantially all of these were collateral for Omega's claims.

4. Following recharacterization, Omega has a secured claim exceeding $500 million. *See* Amended Proof of Claim 8-2, p. 13. Of this amount, roughly $283 million is attributable to the Transfer Portfolio and $219 million is attributable to the Restructuring Portfolio. *See* Proof of Claim 8-1, Part 3, pp. 4-5. Omega's collateral for these claims includes: (1) the Transfer Portfolio, later valued at $190 million; (2) the Restructuring Portfolio, excluding Laurel Baye,[2] valued at $176 million ($225 million less $49 million); and (3) substantially all of the Debtors' accounts receivable and other operating assets. *See* Amended Proof of Claim 8-2, p. 4.

5. Omega's claims in the Original Plan were a hybrid resulting from the RSA and the 9019 Settlement. ***First***, because Omega consented to recharacterization of the Restructuring Portfolio upon confirmation, "Omega's Secured Claim" under the Original Plan included the value of the Restructuring Portfolio. The Restructuring Portfolio's sale proceeds – the Plan Sponsor Consideration – were to be paid to Omega for this secured claim. ***Second***, the Transfer Portfolio would be rejected as a true lease, and returned to Omega per the Omega Compromise. *See* Original Plan, pp. 31-32. As the Omega Compromise in the Original Plan makes clear, the

[2] Omega agrees with the Court that Rule 3019 allows the Debtors to remove the Laurel Baye's value from the "Omega Secured Claim," the "Plan Sponsor Consideration," and Section III.B.1 of the Original Plan. But Omega cannot help but note the parallel between Laurel Baye and the Transfer Portfolio. Just like the "Omega Secured Claim" under the Original Plan had to be ***decreased*** to account for the non-recharacterization of Laurel Baye, it must be correspondingly ***increased*** to account for Omega's secured claim resulting from recharacterization of the Transfer Portfolio.

Transfer Portfolio would not be recharacterized. *See id.* As a result, Omega would not have a Transfer Portfolio secured financing claim. *See* Original Plan, p. 10 (The "Omega Claim means all Claims of Omega for amounts owing by any Debtor under the Master Leases . . . , ***as settled by the Omega Compromise***.") (emphasis added).

6. After the Debtors determined they could not make the Original Plan's payments, the Omega Compromise and all aspects of the Original Plan failed. Subsequently, the Debtors (with Omega's consent) recharacterized the leases of both the Transfer Portfolio Facilities and the Restructuring Portfolio Facilities (except for the four Laurel Baye Facilities). *See* Recharacterization Judgment. After this recharacterization, the Original Plan's definitions no longer reflected Omega's actual or anticipated claims (secured and otherwise). Instead, following recharacterization, as reflected in Omega's amended proof of claim, Omega's claim was $579 million, secured by (1) the Transfer Portfolio, valued at $190 million; (2) the remaining Restructuring Portfolio, valued at $176 million; and (3) substantially all of the Debtors' accounts receivable and other operating assets. Bifurcated under § 506(a), and ignoring the accounts receivable and other operating assets, Omega has a $190 million secured claim on account of the Transfer Portfolio and a $176 million secured claim on account of the Restructuring Portfolio: together, $366 million in secured claims.

7. The Debtors' filed their Amended Plan, which use the Plan Sponsor Consideration to repay Omega's DIP Facility Claims and other administrative or priority claims. *See* Amended Plan, § III.B.1. This treatment was prohibited under the Original Plan. *See* July 9 Ruling. Despite this material change in the distribution priority, the Court ruled that the Amended Plan modification did not adversely change Omega's claim treatment because the intervening recharacterization of the Transfer Portfolio created $190 million in new "value." *See* 3019 Order, p. 17.

IV.
ARGUMENT

A. The 3019 Order erroneously evaluated the Original Plan without accounting for the liens on the recharacterized Transfer Portfolio Facilities.

8. The 3019 Order fails to account for Omega's secured claim created upon recharacterization of the Transfer Portfolio.

9. Recharacterization of a lease gives rise to a secured claim (if the creditor was properly perfected, as Omega is). *Sale-Leasebacks: Things May Not Be What They Seem*, SL100 ALI-ABA 703, 711 (John C. Murray, 2006) ("If [a] lease is subsequently recharacterized as a secured financing transaction rather than a true lease, then the lessor-lienholder's claim will be secured as mortgage debt rather than as rent, and the claim can be restructured by the debtor-lessee, ***with the secured claim of the lessor-lienholder limited to the fair market value of the property***.").[3]

10. Following recharacterization, § 506(a) bifurcates Omega's new claim into a secured portion equal to the amount of Omega's interest in the estates' interest in the Transfer Portfolio, and an unsecured portion for the rest. Omega's interest in the Transfer Portfolio, just like its interest in the Restructuring Portfolio, was the lien resulting from recharacterization. Because the new secured claim exceeds the value of the Transfer Portfolio, the entire $190 million value is subject to Omega's liens, resulting in a $190 million secured claim under § 506(a).

11. Contrary to the July 9 Ruling, the Amended Plan makes the the Plan Sponsor Consideration available to pay administrative claims in these cases, including the DIP Facility Claims. *See* Amended Plan, § III.B.1. The Debtors argued, and the Court agreed, that the reduction to

[3] *See also United Airlines, Inc. v. HSBC Bank USA, N.A (In re United Airlines, Inc.)*, 416 F.3d 609, 611, 618 (7th Cir. 2005) ("A lessee must either assume the lease and fully perform all of its obligations, or surrender the property. 11 U.S.C. § 365. A borrower that has given security, by contrast, may retain the property without paying the full agreed price. ***The borrower must pay enough to give the lender the economic value of the security interest***; if this is less than the balance due on the loan, the difference is an unsecured debt. *See* 11 U.S.C. § 506(a) and § 1129(b)(2)(A). . . . The transaction between United and the CSCDA at San Francisco Airport is a ***secured*** loan and not a lease for the purpose of § 365." (emphasis added)), *accord In re Montgomery Ward, L.L.C.*, 469 B.R. 522, 528 (Bankr. D. Del. 2012).

the Plan Sponsor Consideration was not materially adverse to Omega because Omega "realized" $190 million in new value due to the recharacterization of the Transfer Portfolio.[4]

12. But this analysis incorrectly ignores Omega's perfected liens in the Transfer Portfolio. Omega's liens eliminate any new value in the Transfer Portfolio to supplement the Plan Sponsor Consideration. As noted above, it is indisputable that recharacterization of a real property lease titled in the creditor's name creates a lien on the property in favor of the creditor. The Court accordingly erred by ignoring that the Transfer Portfolio value brought into the estates by recharacterization was subject to Omega's liens resulting from recharacterization.

13. The Debtors previously recognized that recharacterization creating a secured claim was a zero sum game. In their motion seeking approval of the 9019 Settlement (the "***9019 Motion***," Docket No. 101), the Debtors stated "[w]hile the Debtors believe they have strong recharacterization claims to have the leases treated as secured financings, that litigation, even if successful, only lead to a pyrrhic victory. ***Because Omega would be considered a secured creditor with liens against the Debtors' assets that exceed the value of those assets*** . . . ." 9019 Motion,

[4] The Court cites *First Federal Bank of California v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296-97 (B.A.P. 9th Cir. 1998) and *Confederation Life Insurance Co. v. Beau Rivage Ltd.*, 126 B.R. 632, 640 (N.D. Ga. 1991) for the proposition that a postpetition, preconfirmation return of collateral must be credited against the creditor's secured claim rather than its unsecured claim. 3019 Order, p. 17. Omega agrees with this legal proposition, but not the Court's application of it. Because the Transfer Portfolio secured claim was undersecured ($270 million exceeds $190 million), this legal proposition requires treatment of the return of the Transfer Portfolio as a postpetition, preconfirmation payment on the Transfer Portfolio secured claim. *Cf. In re Weinstein*, 227 B.R. at 291-92 (B.A.P. 9th Cir. 1998) ("[T]he total claim of an undersecured creditor is bifurcated into two claims, a secured claim equal to the value of the collateral and an unsecured claim equal to the remainder of the obligation owing to the creditor . . .."). It is entirely inappropriate to treat the return of the Transfer Portfolio as a payment on account of the Restructuring Portfolio secured claim (i.e., the Plan Sponsor Consideration) unless the Transfer Portfolio secured claim has been satisfied. Indeed, while neither *Weinstein* nor *Confederation Life Insurance Co.* dealt with a creditor holding multiple secured claims, which is the situation here, they clearly recognize that a creditor is entitled to payment of the full value of all of its collateral. *Confederation Life Ins. Co.*, 126 B.R. at 639 ("[I]f the collateral does depreciate, the application of adequate protection payments to payment obligations under the plan would give the debtor 'double credit' and would deny the creditor the compensation to which it is entitled."), *accord In re Weinstein*, 227 B.R. 284 at 296 (B.A.P. 9th Cir. 1998) (recognizing that "adequate protection payments replace the lost value of collateral," so "postpetition, preconfirmation payments made on nondepreciating collateral must be allocated to reduce the secured portion of the creditor's claim.").

p. 2 (emphasis added). Even the Court recognizes the Transfer Portfolio is Omega's collateral. *See* 3019 Order, p. 20.

14. The Court believes that Omega agreed, through representations in Court and its papers, to allow the Debtors to use the Transfer Portfolio value to satisfy the "Omega Secured Claim," as that term is used in the Original Plan, without ***any*** adjustment for the secured claim created upon recharacterization of the Transfer Portfolio. This is, respectfully, incorrect.

15. Omega always understood that following recharacterization, the Transfer Portfolio value should be credited against the Transfer Portfolio secured claim, but not the Restructuring Portfolio secured claim. ***Omega never agreed to a credit of the Transfer Portfolio value against the "Omega Secured Claim" without any adjustment for Omega's liens on the Transfer Portfolio***. Rather, Omega simply recognized the propriety of a credit against its claims "in these cases," expressly recognizing the addition of the Transfer Portfolio secured claim following recharacterization (thus Omega's counsel referenced a credit against a $578 million claim, representing the full balance due under the Master Leases, not the $423 million claim in the Original Plan). *Cf.* 3019 Order, p. 16, nn.19-20.

16. The Court also mentions the Debtors' and Committee's reservation of a right to "apply [the value of the Transfer Portfolio] against the Omega Entities' claims in these Bankruptcy Cases." 3019 Order, p. 14 (quoting Recharacterization Judgment). Putting aside that this is a mere reservation of rights, not a creation of substantive rights, this language is consistent with Omega's position that the Transfer Portfolio value should be applied against the Transfer Portfolio secured claim resulting from recharacterization. The Court also erred in the 3019 Order when it stated that the Valuation Order "expressly permitted the Debtors to seek a credit against the ***Omega Secured Claim*** under a plan of reorganization." 3019 Order, p. 9 (emphasis added). The Valuation Order did not; it denied the motion "without prejudice to seeking similar relief in a plan." Valuation Order, p. 2. Indeed, the Court, in its oral ruling denying the Valuation Motion noted "Omega's position that the value of the transferred property

must . . . be credited against the ***prepetition obligations***." Tr. of Ruling on Valuation Motion, 6:13-14 (emphasis added).

17. The 3019 Order improperly conflates the Omega Secured Claim as defined in the Original Plan with "the Omega Entities' claims in these Bankruptcy Cases." *Compare* 3019 Order, pp. 14, 16 *with id*., p. 20. But Bankruptcy Rule 3019 looks to changes in the treatment of claims; there is no qualifier of *where* in the plan that claim treatment is found.[5] The relevant change of claim treatment arose from the shift of the Transfer Portfolio's treatment as a true lease under § 365 (as stated in the Omega Compromise) to that of a secured financing under §§ 506(a) and 1129.

18. But the Amended Plan's modifications ***purporting*** to conform to recharacterization are adverse to Omega's claim treatment because Omega does not receive both: (1) full payment of the $190 million Transfer Portfolio secured claim resulting from recharacterization, as required by § 506(a) and § 1129; and (2) full payment of Omega's agreed-upon distribution on its Restructuring Portfolio secured claim (i.e., the Plan Sponsor Consideration), as required by the Original Plan.

19. In short, the only way the Original Plan can satisfy the secured claim created by Transfer Portfolio recharacterization ***and also*** satisfy Bankruptcy Rule 3019 is to give Omega the unabridged Plan Sponsor Consideration (less the carve out for the unsecured creditors, if permitted) with respect to the Restructure Portfolio secured claim and the full value of the Transfer Portfolio with respect to the Transfer Portfolio secured claim.

[5] Alternatively, if after recharacterization, as the Court described, the Original Plan's "Omega Compromise" was just a preconfirmation return of collateral, this collateral should be added to Section III.B.1 of the Original Plan, which results in a corresponding increase in the "Omega Secured Claim" under the Original Plan. (*N.B.*, the Omega Claim definitions in the Original Plan incorporated the effects of the Omega Compromise.) Comparison of the Original Plan, so viewed, with the Amended Plan, reveals that both require a distribution of the Transfer Portfolio. The only difference is that the Amended Plan now breaches the Plan Sponsor Consideration.

B. Paragraph 6 of the 9019 Settlement Order preserved the estates' rights in any equity in the Transfer Portfolio; it did not prospectively invalidate Omega's liens in the Transfer Portfolio upon recharacterization.

20. The Court notes that the rejection of the Transfer Portfolio under the 9019 Settlement was subject to a preservation of certain rights, including the estates' recharacterization claims. The Court notes that the preservation of rights is meaningless "if Omega could simply claim that the debtors received full value for the now-recharacterized Transfer Portfolio in the 9019 Settlement." 3019 Order, p. 15. The result is that the Court ruled that recharacterization created $190 million of unencumbered value for the estates.

21. However, this analysis fails to consider that the $190 million in value brought into the estates via recharacterization of the Transfer Portfolio was subject to a lien resulting from that same act of recharacterization. The leases were recharacterized as financing agreements. And, where real property leases are recharacterized as financing agreements, the nominal lessor's legal title as of the Petition Date is treated as a lien securing the future stream of nominal "lease," now loan, payments. *In re United Airlines, Inc.*, 416 F.3d at 618; *In re Montgomery Ward, L.L.C.*, 469 B.R. at 528.

22. Accordingly, any right to recharacterization preserved under the 9019 Settlement Agreement had value to the estates ***if it could also be shown that unencumbered value had been transferred*** (i.e., there was equity in the property at the time of transfer). While recharacterization would bring the Transfer Portfolio Facilities into the Debtors' estates, the Facilities would come into the estates subject to a lien in Omega's favor. Absent proof that the Transfer Portfolio value exceeded Omega's secured claim or some other successful challenge to the validity, priority, and extent of any resulting liens (each, a "***Lien Challenge***"), recharacterization brought no value to the estates – it only allowed the Debtors to sell their assets using Section 363(k). The Court recognized this fact in its oral ruling denying the Valuation Motion when it stated, "I believe those caveats [in the 9019 Order reserving certain rights] were narrower than the

parties argued, more of a preservation of claim should Omega prove to have a hole in its liens or be found liable under another theory." Tr. of Ruling on Valuation Motion, 6:18-25.

23. The Debtors also recognized this fact in their 9019 Motion, conceding "***[b]ecause Omega would be considered a secured creditor with liens against the Debtors' assets that exceed the value of those assets***" recharacterization of the Transfer Portfolio would "***only lead to a pyrrhic victory***." 9019 Motion, p. 2. Of course, the Committee's rejoinder at the hearing was that Omega's liens might not fully encumber the value transferred.[6] It was clear that recharacterization *qua* recharacterization, without a Lien Challenge, would simply create and then pay an additional secured claim – in other words, it would just be a wash for the estates. In contrast, any "value" transferred not subject to Omega's valid liens would be preserved and, if proven, would have to be accounted for in Omega's treatment in any confirmable plan.[7]

24. By Paragraph 6 in the 9019 Settlement Order, Omega took back the Transfer Portfolio, accepting the risk that recharacterization would be joined with a successful Lien Challenge. But as yet, no such challenge has been successfully prosecuted. Any implication that recharacterization

[6] Hence, the parties' discussed the potential value of the Transfer Portfolio in relation to Omega's resulting claims. *See e.g.*, Docket No. 385, pp. 58–59 (Mr. Califano: indicating there was no equity in the Transfer Portfolio because Omega was taking a sharp rent cut and noting the size of Omega's resulting deficiency claim), pp. 72:23-25–73:1 (Mr. Cooley: explaining that under 9019 Settlement, Omega receives properties that until proven otherwise would be subject to valid liens); p. 84 (Mr. Lawall: arguing that Omega's liens on Transfer Portfolio were subject to challenge under fraudulent conveyance law); pp. 127–28, 133 (Mr. Lapowsky: arguing that Debtors' "pyrrhic victory" argument regarding recharacterization of the Transfer Portfolio should be discounted because certain assets, such as provider agreements, were not subject to Omega's liens, the fraudulent transfer claims could be used to avoid the liens, and Omega might be unable to satisfy any money judgment resulting from a lien deficiency); pp. 139–40 (Mr. Califano: arguing that Committee's rights to pursue their claims, for instance, their *ResCap* arguments, with respect to the Transfer Portfolio were preserved to confirmation, and describing these claims as value the unsecured creditors could then obtain).

[7] Docket No. 385, pp. 139–40 (Mr. Califano: arguing that Committee's rights to pursue their claims, for instance, their "*ResCap*" arguments, with respect to the Transfer Portfolio were preserved to confirmation, and describing these claims as value the unsecured creditors could then obtain). Mr. Califano's use of the term "value" is somewhat vague until put in context. Put in context, Mr. Califano's comments regarding preserving the Committee's *ResCap* arguments and fraudulent conveyance theories makes it plain that the value being described was any value unencumbered by Omega's liens.

brings value to the estates simply ignores the secured claim created by virtue of recharacterization.

C. Failure to account for Omega's liens in the Transfer Portfolio is inconsistent with the Bankruptcy Rules, Bankruptcy Code, and Constitution.

25. The 3019 Order clearly requires the use of the Transfer Portfolio value in derogation of Omega's liens on that value. Bankruptcy Rule 3019 does not and cannot allow this result. Section 1127(d) provides that following a plan modification, a creditor having voted to accept or reject the plan, may (within the time fixed by the Court) change its vote. Bankruptcy Rule 3019 clarifies that a creditor, having previously accepted a plan, is deemed to have accepted a modification so long as the change "does not adversely change the treatment of any claim by any creditor." Fed. R. Bankr. P. 3019(a).

26. Bankruptcy Rule 3019 does not contemplate the circumstance faced by the Court, because it would require the Court to compare Omega's claim treatment under § 365 with claim treatment under § 506 and § 1129, which entirely changes the landscape of plan confirmation rights and procedure. The Original Plan and Amended Plan are thus a comparison of apples and oranges. Indeed, the Court was asked to deem Omega to have voted a secured claim in favor of the Original Plan that did not exist yet at the time of balloting. But even if the comparison can be made, it cannot be made without affording Omega a distribution in the full amount of its Transfer Portfolio secured claim.

27. To do otherwise is inconsistent with § 506(a) (giving a creditor a secured claim to the extent of its interest in the estates' interest in property) and the minimum requirements necessary to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(7)(A)(ii) (providing that holder of impaired claim that has not voted claim in favor of the plan is entitled to liquidation value of claim or interest).[8] Bankruptcy Rule 3019 cannot "not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2075; *Bonner v.*

[8] Given that Omega was not given an opportunity to vote its Transfer Portfolio secured claim, which is clearly impaired, it would seem that the Amended Plan also runs afoul of § 1129(b)(2)(A)(2)(II).

Adams (Matter of Adams), 734 F.2d 1094, 1099 (5th Cir. 1984); *see also In re Friesenhahn*, 169 B.R. 615, 629 (Bankr. W.D. Tex. 1994) ("The Bankruptcy Code and the Rules must be harmonized unless it is impossible to do so, and if two plausible interpretations are possible, the one that is both possible and most consistent with congressional intent should prevail.").

28. Because Omega's Transfer Portfolio liens (a) were not anticipated at the time the Original Plan was voted upon, (b) arose after the Original Plan was voted upon, (c) will be voided upon confirmation of the Amended Plan, and (d) will not be repaid at least the minimum required under § 1129(a)(7)(A)(ii), the Court's failure to afford Omega an opportunity to vote (at least voting the secured claim resulting from recharacterization of the Transfer Portfolio) for or against the Amended Plan, unlawfully abridges Omega's property rights without due process of law. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 588 (1935) ("The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment.").

29. Accordingly, the Court erred in using Bankruptcy Rule 3019 to bind Omega to a plan treatment that effectively eviscerates a lien created after Omega voted without affording Omega the minimum protections of the Bankruptcy Code (*i.e.*, distribution in the full amount of Omega's Transfer Portfolio secured claim).

V.
CONCLUSION

30. Omega bargained for a specific claim treatment when it voted in favor of the Original Plan – (a) the return of the Transfer Portfolio under the Omega Compromise, (b) the Plan Sponsor Consideration, less a proposed amount set aside for general unsecured creditors, and (c) payment in full in cash of the DIP Facility Claim.

31. Recharacterization of the Transfer Portfolio brought into the estates $190 million of real property but that value was subject to a corresponding $190 million secured claim.

32. Consistent with Bankruptcy Rule 3019, the Original Plan certainly could be modified such that Omega would have a $190 million credit of the Transfer Portfolio value against its corresponding $190 million Transfer Portfolio secured claim. But nothing in Bankruptcy Rule 3019 allows the shifting of that $190 million in value – which Omega would have received in full under the Original Plan – to other creditors. Using the Transfer Portfolio, whether as a leasehold interest or as collateral, to repay other creditors was never contemplated by the Original Plan and was never agreed to as part of the Recharacterization Judgment. Accordingly, the Court erred in holding that the Amended Plan's treatment of Omega's claims is not material and adverse as compared to the Original Plan.

WHEREFORE, Omega respectfully requests that the Court amend its 3019 Order to deny the relief requested in the Debtors' 3019 Motion.

Dated: December 11, 2018
Dallas, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2018, a copy of the foregoing was served to all the parties listed on the *Master Service List* [Docket No. 1225] maintained by the Debtors pursuant to the Court's *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 99] via the Court's EM/ECF electronic system to all parties consenting to service through same, and to all others by first-class mail, postage pre-paid addressed as listed therein.

/s/ Michael P. Cooley
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